

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JILL KATZ and MICHAEL KATZ, As
Administrators of the Estate of Sarah Katz,
Deceased

Plaintiffs,

v.

PANERA BREAD COMPANY and
PANERA, LLC

Defendants.

CIVIL ACTION

NO. 23-4135

**PLAINTIFFS' RESPONSE IN OPPOSITION TO
DEFENDANTS TRIAL STATUS REPORT INDICATING CONFLICT
WITH COURT'S PRE-TRIAL CONFERENCE AND NEW TRIAL DATES**

Plaintiffs, by and through their undersigned counsel, hereby submit the following response in opposition to Defendants' trial status report indicating their counsel's conflict with the pre-trial conference and new trial date of this case and requesting a new trial date after October 18, 2024.

On August 30, 2024, Defendants, Panera Bread Company and Panera, LLC, filed a trial status report indicating that the new trial date set by this Court will now be in conflict with Defendants' counsel's engagement in another state court case in California, *Hubert Hansen Intellectual Property Trust v. The Coca-Cola Company*, (Case No. 37-2016-00021046-CU-MC-CTL) ("Hubert's case"). As such, they are requesting a new trial date for some point after October 18, 2024. The actions taken by Defendants to date clearly display an on-going effort, beginning in November 2023, to thwart the efforts of Plaintiffs and this Court to timely begin

trial by failing to notify the parties of the Hubert's case at the outset and now utilizing its existence only when it serves Defendants' end: to delay the trial of this case.

As early as November 7, 2023, *prior* to Defendants entering their appearance on this case, Defendants had notice of both the Hubert's case trial date and the Katz case trial date.¹ *See Hubert Case Docket* below and attached hereto as Exhibit "A."

1531	11/07/2023	Notice of Rescheduled Hearing SD generated.	
1530	11/07/2023	Minutes finalized for Ex Parte heard 11/07/2023 08:30:00 AM.	
1529	11/07/2023	Civil Jury Trial continued pursuant to party's motion to 08/23/2024 at 08:45AM before Judge Gregory W Pollack.	
1526	11/07/2023	Opposition - Other (TO PLAINTIFFS EX PARTE APPLICATION FOR A FURTHER HEARING ON MIL NO. 7) filed by Monster Beverage Corporation; Monster Energy Company; NEXSTEP BEVERAGES LLC; The Coca-Cola Company.	Monster Beverage Corporation (Defendant); Monster Energy Company (Defendant); NEXSTEP BEVERAGES LLC (Defendant); The Coca-Cola Company (Defendant)
1525	11/07/2023	Appointment of Official Reporter Pro Tempore (Gloria D. Mazon, CSR#9356 (619-884-6828)) filed by The Superior Court of San Diego.	
1524	11/06/2023	Proof of Service filed by Hubert Hansen Intellectual Property Trust; Hubert Hansen Intellectual Property Trust; Hubert Hansen Intellectual Property Trust.	Hubert Hansen Intellectual Property Trust (Plaintiff); Hubert Hansen Intellectual Property Trust (Plaintiff); Hubert Hansen Intellectual Property Trust (Plaintiff)
1523	11/06/2023	Brief - Other filed by Hubert Hansen Intellectual Property Trust; Hubert Hansen Intellectual Property Trust; Hubert Hansen Intellectual Property Trust.	Hubert Hansen Intellectual Property Trust (Plaintiff); Hubert Hansen Intellectual Property Trust (Plaintiff); Hubert Hansen Intellectual Property Trust (Plaintiff)

At that time, the instant case had already been scheduled for trial on September 12, 2024, and that date and the corresponding deadlines were known to Defendants. On or about December 11, 2023, Defendants entered their appearance on this case. As stated, and shown, Defendants had knowledge of the Hubert's case at this time but did not make this knowledge known to Plaintiffs nor this Court. As such, a trial date for this case remained set for September 12, 2024. Over the next six months, Defendants kept their knowledge of the Hubert's case private and in doing so, impeded opportunities to amicably pursue another trial date that would work for the Court and for Plaintiffs.

¹ Initial counsel for Panera withdrew their appearance in this case after the Rule 26 conference with the Court.

With no knowledge of Defendants impending surprise, Plaintiffs, understandably, reasonably relied on the September 12, 2024, trial date. Plaintiffs scheduled two additional trials for October 28, 2024, and November 12, 2024. Plaintiffs also notified and scheduled experts for the September 12, 2024, trial date.

On June 17, 2024, after expert reports were served by both parties, Plaintiffs and the Court were finally made aware of the Hubert's case by Defendants and there was a request by Motion to postpone the instant case. Defendants represented that the Hubert's case trial would be six weeks and would, in turn, conclude by October 4, 2024. While the Court initially denied Defendants' Motion, the Court and Plaintiffs' counsel accommodated the Hubert's case trial and the trial for Plaintiffs case was moved to October 7, 2024.

Now, as of Defendants Trial Status Report filed on August 30, 2024, Defendants, alleging that the Hubert's case trial will now take eight weeks, are asking for the trial in this case to be moved again to some point after October 18, 2024, despite now knowing that Plaintiffs have trials on October 28, 2024 and November 12, 2024. It is evident that Defendants' ultimate objective is to move this matter to 2025.

While Plaintiffs have another trial beginning on October 28, 2024, so it is preferable that the trial date remain as currently scheduled for October 7, 2024, Plaintiffs wish to cooperate and are agreeable to moving the trial date as late as October 14, 2024 to accommodate Defendants' trial attachment. However, for the foregoing reasons, Plaintiffs are respectfully requesting that Defendants' delay tactics not be rewarded and that the trial date for this matter be scheduled no later than October 14, 2024.

Respectfully Submitted,

KLINE & SPECTER, P.C.

By: /s/ Elizabeth A. Crawford, Esquire
Thomas R. Kline, Esquire
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Wyatt J. Larkin, Esquire
Attorneys for Plaintiffs

Dated: September 3, 2024